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Defendant/Third-Party Plaintiff
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BEASTIE BOYS, A NEW YORK PARTNERSHIP,
MICHAEL DIAMOND, ADAM HOROVITZ AND
DECHEN YAUCH AS EXECUTOR OF THE ESTATE
OF ADAM YAUCH, DECEASED, EACH
INDIVIDUALLY AND COLLECTIVELY D/B/A
BROOKLYN DUST MUSIC,

Plaintiffs,

-against-

MONSTER BEVERAGE CORPORATION,
MONSTER ENERGY COMPANY,

Defendants.

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MONSTER ENERGY COMPANY,

Third-Party Plaintiff,

-against-

ZACH SCIACCA a/k/a Z-TRIP,

Third-Party Defendant.
-----X

Case No. 12 CV 6065(PAE)
ECF Case

**DECLARATION OF
DANA M. SUSMAN IN
SUPPORT OF DEFENDANTS'
MOTION TO PRECLUDE
THE TESTIMONY
OF PLAINTIFF'S EXPERT
LISA THOMAS**

I, DANA M. SUSMAN, declare as follows:

1. I am a member of the law firm of Kane Kessler, P.C., one of the attorneys representing Defendants Monster Beverage Corporation and Monster Energy Company (“Monster”) in this matter. I submit this Declaration in Support of Monster’s Motion to Preclude the Testimony of Plaintiff’s Expert Lisa Thomas.

2. Attached here to as Exhibit A is a true and correct copy of relevant portions of the deposition transcript of Nelson Phillips, taken on May 7, 2013.

3. Attached here to as Exhibit B is a true and correct copy of the Lisa Thomas report, dated August 6, 2013.

4. Attached here to as Exhibit C is a true and correct copy of the transcript of deposition of Lisa Thomas, taken on August 22, 2013.

5. Attached here to as Exhibit D is a true and correct copy of a license agreement for the use of certain Beastie Boys’ songs in connection with an ESPN Winter X-Games program, dated January 5, 2011.

6. Attached here to as Exhibit E is a true and correct copy of a license agreement for the use of certain Beastie Boys’ songs to Nike, dated January 6, 2012.

7. Attached here to as Exhibit F is a true and correct copy of a license agreement for the use of certain Beastie Boys’ songs to Nixon, dated February 13, 2012.

8. Attached here to as Exhibit G is a true and correct copy of a license agreement for the use of certain Beastie Boys songs in “The Hangover Part II” motion picture trailer, dated April 8, 2011.

9. Attached here to as Exhibit H is a true and correct copy of a license agreement for the use of certain Beastie Boys' songs in "The Hancock" motion picture trailer, dated June 13, 2008.

10. Attached here to as Exhibit I is a true and correct copy of a license agreement for the use of certain Beastie Boys' songs in "21 Jump Street" motion picture trailer, dated September 20, 2011.

11. Attached here to as Exhibit J is a true and correct copy of the expert report of Erich Joachimsthaler, dated August 13, 2013.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2014



Dana M. Susman